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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,766	09/22/2003	James J. Lloyd	LOYDJ-001C2G	1363
7590	03/22/2004		EXAMINER	
Kit M. Stetina, Esq. STETINA BRUNDA GARRED & BRUCKER Suite 250 75 Enterprise Aliso Viejo, CA 92656			COOLEY, CHARLES E	
			ART UNIT	PAPER NUMBER
			1723	
			DATE MAILED: 03/22/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/667,766	LLOYD, JAMES J.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Charles E. Cooley	1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 24-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 24-31 is/are allowed.
- 6) Claim(s) 32-43 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 22 September 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date: _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>01022004</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on 2 JAN 2004 has been considered by the examiner.

### ***Specification***

1. The disclosure is objected to because of the following informalities:
  - a. Page 1: the status of each of the parent applications should be updated to their current status.

Appropriate correction is required.

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: -- PORTABLE BEVERAGE DELIVERY AND MIXIGN SYSTEM--.

3. The abstract is acceptable.

### ***Double Patenting***

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 32-43 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 4, 5, 6, 7, 8, 11, and 12 of U.S. Patent No. 6,439,757 to Lloyd. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 32, 33, 35, 36, and 37 are anticipated by patent claim 1; claim 34 is anticipated by patent claim 2; claim 38 is anticipated by patent claims 4 and 6; claim 39 is anticipated by patent claim 7; claim 40 is anticipated by patent claim 5; claim 41 is anticipated by patent claim 8; claim 42 is anticipated by patent claim 11; and claim 43 is anticipated by patent claim 12.

6. Claims 32-43 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 5, 6, and 8 of U.S. Patent No. 6,652,134 to Lloyd. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 32, 33, and 35-40 are anticipated by patent claim 1; claim 34 is anticipated by patent claim 2; claim 41 is anticipated by patent claim 8; claim 42 is anticipated by patent claim 5; and claim 43 is anticipated by patent claim 6.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 32, 33, 41, 42, and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Casebier (US 4,143,795).

The patent to Casebier discloses a system comprising a freestanding and portable (Col. 4, lines 67-68 and Col. 5, lines 1-4) housing 6; a chamber 4 placed in the housing 6; the chamber 4 having a closeable introduction aperture 18 exteriorly exposed and accessible through an opening (the top of the housing 6 is open thus forming an opening) situated through an exterior site above the housing as seen in Fig. 1; the closeable introduction aperture 18 being closeable by a closure member 20; a closeable exit aperture 24 for the chamber 4 for gravity dispensing the contents of the containers; the exit aperture 24 being exposed through a second opening (proximate 8) of the housing; the chamber 4 being formed of a plastic material (col. 3, lines 59-64); the exit aperture 24 being controlled by a valve 34 integral with the exit aperture.

9. Claims 32-36 and 42-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Marquardt (US 5,050,775).

The patent to Marquardt discloses a system comprising a freestanding and portable housing 22 (Fig. 7) defining a first opening 112 (Fig. 3) and a second opening

70 (Fig. 1); a chamber 24 placed in the housing 22 for holding a first liquid (col. 2, lines 26-34); the chamber 24 having a closeable introduction aperture 26 exposed through the first opening 112 and configured to be opening by removing a closure 28; the chamber 24 having an exit aperture 30 exposed through the second opening 70 and configured to be openable for gravity dispensing of the contents of the chamber 24; ; the housing 22 being constructed of cardboard (Col. 2, lines 54-58); the housing 22 having multiple compartments or portions (within 20 and above 36); the chamber 24 being accommodated within the first portion 20 of the housing 22; the exit aperture may be controlled by a valve formed with the exit aperture (Col. 2, lines 36-38).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Casebier (US 4,143,795) in view of Brown et al. (US 5,186,359).

Casebier discloses that the housing may be formed of a myriad of materials (Col. 3, lines 59-68) but does not disclose the material being cardboard. The patent to Brown et al. discloses a system comprising a housing (Fig. 3); a chamber 246 disposed within the housing; the chamber 246 having a single closeable introduction and exit aperture

controlled by a valve 250; the housing having multiple compartments 242, 244 adapted for carrying a container; the housing being constructed of cardboard (Col. 4, lines 41-43). It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have formed the housing of Casebier from cardboard as suggested by Brown et al. since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416; *Sinclair & Carroll Co., Inc. v. Interchemical Corp.*, 65 USPQ 297 (1945).

Furthermore, in view of the fact that the use of cardboard vis-à-vis any other common construction material solves no stated problem insofar as the record is concerned and the conclusion of obviousness can be made from the common knowledge and common sense of one of ordinary skill in the art (*In re Bozek*, 416 F.2d 1385, 163 USPQ 545 (CCPA 1969)), it would have been obvious to one of ordinary skill in the art to have formed any of the housing of the prior art housings from a well-known construction material such as cardboard. *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975).

It is observed that artisans must be presumed to know something about the art apart from what the references disclose (see *In re Jacoby*, 309 F.2d 513, 135 USPQ 317 (CCPA 1962)). Moreover, skill is presumed on the part of those practicing in the art. See *In re Sovish*, 769 F.2d 738, 226 USPQ 771 (Fed. Cir. 1985). Therefore, it is concluded that the selection of a well-known material in the art such as cardboard would have been obvious to one of ordinary skill in this art, if for no other reason than to

achieve the advantage of using a more modern material or a lower cost or more easily fabricated material.

12. Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marquardt (US 5,050,775) in view of Brown et al. (US 5,186,359).

Marquardt but does not disclose the chamber being formed of a plastic material. The patent to Brown et al. discloses a system wherein the containers 246, 248 are flexible plastic bags (Col. 4, lines 25-27). It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have formed the containers of Marquardt from a plastic material as disclosed by Brown et al. to lower the cost of the containers or to render the containers easily disposable after the contents have been depleted.

13. Claims 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marquardt (US 5,050,775) in view of Wright (US 5,085,346).

Marquardt discloses a compartment formed within the second portion 36 of the housing and discloses the chamber having a first liquid component in the form of a mixer beverage (col. 2, lines 26-34) but does not disclose a container in the second portion of the housing. The patent to Wright discloses a system comprising a housing 11; a chamber 34 disposed within the housing for holding a fluid 42; the chamber 34 having a single closeable introduction aperture and exit aperture 30 controlled by a valve 31; the housing having a first portion or compartment 19 for holding the chamber 34 and a second portion or compartment 21 which holds a container 36 which contains a second liquid component. It would have been obvious to one having ordinary skill in

the art, at the time applicant's invention was made, to have provided the compartment in the second portion 36 of Marquardt with a container which holds a second liquid component as disclosed by Wright for the purpose of permitting the chamber in the first portion of the housing to receive contents of the container in the second portion of the housing or, conversely, the container to receive contents of the chamber (col. 3, line 57 through col. 4, line 27).

14. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marquardt (US 5,050,775) in view of Wright (US 5,085,346) as applied to claim 38 above and further in view of Mullen et al. (US 5,673,817).

Marquardt in view of Wright does not disclose the second liquid component being an alcoholic beverage. The patent to Mullen et al. (US 5,673,817) discloses a system comprising a housing 13 with multiple portions 17a, 17b, and 17c; a chamber 21 which may include a mixer beverage therein (col. 1, lines 9-15) and which is accommodated within a portion of the housing (Fig. 1); a compartment in the housing (e.g., the opening within the housing 13 defined by 17c); a container 21 which may include an alcoholic beverage therein (such as wine: col. 1, line 14 or col. 5, lines 46-47) removably supported in the compartment; the housing being segmented into the multiple portions 17a, 17b, and 17c via walls (the walls of the housing proximate 13 in Fig. 2); the chamber 21 being fabricated from plastic material (col. 2, lines 57-58); the compartment having upper and lower border structures (Fig. 2); the container 21 having top and bottom portions (Fig. 3); the upper and lower border structures retaining the top and bottom portions of the container (Fig. 1); the compartment defining a void (the perimeter

defined about 17c) which displays the container when the container is supported in the compartment (as the front 23 of the container is clearly visible when the container is placed in the compartment as seen in Figure 1). It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have substituted the second liquid component in Marquardt in view of Wright as disclosed by Mullen et al. for the purpose of forming a beverage (which Marquardt teaches) with alcohol therein.

***Allowable Subject Matter***

15. Claims 24-31 are allowed.

***Response to Amendment***

16. Applicant's arguments with respect to the pending claims have been considered but are deemed to be moot in view of the new grounds of rejection necessitated by the preliminary amendment.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley whose telephone number is (571) 272-1139. The examiner can normally be reached on Mon-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Charles E. Cooley  
Primary Examiner  
Art Unit 1723

16 March 2004